January 6, 2011

Administrator Lisa Jackson
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dennis J. McLerran, Regional Administrator
U.S. Environmental Protection Agency, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: Request for EPA to exercise its authority under Section 404(c) of the Clean Water Act to protect water quality in Bristol Bay from the proposed Pebble Mine.

Dear Ms. Jackson and Mr. McLerran:

The National Tribal Water Council (NTWC) was initiated by the EPA Office of Water to provide a national forum that would facilitate the exchange of water protection expertise among Tribal water professionals and other water protection experts. With that opportunity came responsibility. During its first meeting, NTWC members expanded their mission to include an intent "*to advocate for the health and sustainability of clean water, and for the productive use of water for the health and well-being of Indian Country, Indian communities, Alaska Native Tribes and Alaska Native.*" With these factors in mind, the NTWC would be remiss if we were to ignore the potentially catastrophic environmental threat faced by the Tribes and other citizens in Alaska.

In early September of this year, the NTWC travelled to Juneau, Alaska, to attend the 2010 Tribal Leaders Summit/Region 10/RTOC meeting. The Council's intent was to learn first-hand from Alaska Native Villages about the unique environmental and water quality-related issues they are confronting, so that we could more effectively advocate for the technical and financial resources that they need to protect their traditional resources and subsistence lifeways. The NTWC hosted a listening session during the Summit, and committed to follow up on specific issues, including providing a letter of support for the Native communities in the Bristol Bay region to protect their subsistence salmon fisheries. Although we heard many moving testimonies from Tribal members and leaders about the challenges they face, none made such an impact as the concerns raised about predictable impacts from hard rock mining, and the proposed Pebble Mine in particular.

The NTWC recommends that the U.S. Environmental Protection Agency ("EPA") proactively take steps to protect the water quality in Bristol Bay from the proposed Pebble Mine by exercising its authority under Section 404(c), 33 U.S.C. § 1344(c).

> Under Section 404(c),
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> [t]he Administrator is authorized to . . . deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

The Administrator may make this determination "with regard to any existing or potential disposal site before a permit application has been submitted to or approved by the [Army] Corps or a state", and "whenever he determines that the discharge of dredged or fill material is having or will have an 'unacceptable adverse effect' on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." 40 C.F.R. § 231.1(a).

The NTWC believes that it is critical for EPA to undertake this determination for the area of the proposed Pebble Mine, which may include the approximately 1,000 square miles of mining claims in the Bristol Bay region that will likely impact water quality in the area of the largest, and last, productive and sustainable salmon fisheries in the world.

The Bristol Bay region in Alaska and the clean waters of its lakes, rivers, and streams produce one-third of the world's sockeye salmon supply. Commercial salmon fishing in Bristol Bay accounts for one-third of Alaskan income derived from commercial salmon fishing and supports a vital and growing sport fishing industry, both sustaining thousands of jobs in Alaska. For thousands of years, the clean water and fisheries resources of Bristol Bay have also sustained the subsistence and culture of Alaska Natives in the region. Most of the communities in the Bristol Bay region are self-reliant, as it is geographically isolated from the rest of the state, and the vast majority of the population relies upon subsistence fishing and hunting for a significant percentage of their food.

Throughout the world, many salmon stocks are in serious decline. Yet, the Bristol Bay watershed, with its intact landscape and pristine waters, still supports the world's largest remaining wild sockeye salmon fishery[1] – an estimated 42 million sockeye salmon in 2009. Salmon is the most valuable commercial fish managed by the state of Alaska, and Bristol Bay is Alaska's richest commercial fishery. Scientists consider salmon stocks in Bristol Bay as globally significant and a top priority for conservation.[2] It is recognized as one of the world's few remaining Pacific salmon strongholds because wild salmon of Bristol Bay remain abundant,

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[1] Alaska Department of Fish and Game, Division of Commercial Fisheries, Alaska's Fisheries Overview, available at http://www.cf.adfg.state.ak.us/geninfo/about/akfisheries.php.

[2] State of the Salmon Conference, 2009 Conference: http://www.stateofthesalmon.org/conference2009/proceedings.html.

highly diverse, and their genetic integrity and essential habitats remain intact. It is one of the very few sockeye salmon fisheries in the world certified as sustainable.[3]

The proposed Pebble Mine is a copper-gold-molybdenum prospect located in the headwaters of Bristol Bay. Current ore projections indicate that the Pebble Mine will be the largest mine in North America – generating up to 10 billion tons of mine waste (tailings).[4] In 2006, Northern Dynasty Minerals submitted plans to store 2 ½ billion tons of mine tailings behind a set of massive dams – one of them 750 feet high and the other 450 feet high[5] – which together would be larger than China's Three Gorges Dam. Since then, Pebble Limited Partnership's ("PLP") ore projections have tripled in size, which would necessitate three times the storage capacity. The mine would also require the construction of over 80 miles of road and slurry pipelines, roughly 200 miles of transmission lines, and a deep-water port.[6]

The proposed mine site is at the headwaters of a hydrologic divide in an especially wet area that provides important spawning grounds for the Bristol Bay salmon fisheries. The impoundments planned by PLP would sit on highly permeable sand and gravel; thus, mine waste contamination to ground and surface water would be virtually impossible to contain over the life of the mine and after closure. The high seismic risk in this area also poses an unacceptable risk of dam failure, and further increases risk to surface and ground water.

EPA may initiate a determination under Section 404(c) of the Clean Water Act if there is "reason to believe" that an "unacceptable adverse effect" could result from the use of the Nushagak and Kvichak river drainages "for the disposal of dredged or fill material" for the proposed Pebble Mine. 40 C.F.R. § 231.3(a). An "unacceptable adverse effect" is defined as "impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas." 40 C.F.R. § 231.2(e).

The NTWC supports our Alaska Native brothers' and sisters' request that the EPA act now to recommend that the use of at least the Nushagak and Kvichak River drainages be withdrawn from consideration for the disposal of dredged or fill material, because there is adequate reason to believe that an "unacceptable adverse effect" could result from the proposed Pebble Mine. An "unacceptable adverse effect" could result because: (1) the large size of the proposed Pebble Mine is unprecedented; (2) the geochemistry of the orebody shows that it has significant acid generating potential; (3) the location of the proposed mine is at the headwaters of the world's premiere commercial, sport, and subsistence salmon fisheries; (4) the huge quantity of potential mine waste (ten billion tons) to be disposed of in the wetlands, lakes, streams, and rivers of the Nushagak and Kvichak River drainages; and (5) the track record of the majority of large

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[3] *See* http://www.msc.org/track-a-fishery/certified/all-certified-fisheries.

[4] Current estimates indicate a total resource of 5.94 billion tons measured and indicated and 4.84 billion tons inferred, for a total deposit of 10.78 billion tons. On average, 99% of the mined deposit becomes mine tailings, after processing. *See* http://www.pebblepartnership.com/files/PEB0028%20press%20release%20feb%202010.pdf http://www.pebblepartnership.com/files/PEB-0028%20press%20release%20feb%202010.pdf. In contrast, the Bingham Canyon Mine is currently the largest mine in North America, with 7 billion tons of mined material (http://www.kennecott.com/educators/plan-a-field-trip/).

[5] Northern Dynasty Mines, Pebble Project Tailings Impoundment An Initial Application Report (REF. NO. VA101-176/16-13); available at http://dnr.alaska.gov/mlw/mining/largemine/pebble/waterapp.htm.

[6] *See* http://www.pebblepartnership.com/pages/project-information/road-port-power.php.

hardrock mines, especially sulfide mines, is to violate water quality standards when such violations were predicted not to occur.

Further, the NTWC requests that EPA determine that the Nushugak and Kvichak river watersheds be characterized as aquatic resources of national importance ("ARNI"), under the Memorandum of Agreement ("MOA") reached by the EPA and the U.S. Army in 1992 pursuant to Section 404(q) of the Clean Water Act, 33 U.S.C. §1344(q). As Alaska Native communities, including the Bristol Bay Native Corporation, have clearly established, these watersheds provide significant values related to sustaining a critical commercial and culturally important subsistence fishery, biodiversity, and downstream water quality. These resources are nationally and internationally significant, and their designation as ARNI is appropriate under 40 C.F.R. §§230.40-45 and applicable precedent.

The 1992 MOA between the EPA and the Army provides for the elevation of individual permit cases for Department of the Army review when the project, within the scope of impacts evaluated by the Army Corps, will result in unacceptable adverse effects to aquatic resources of national importance. The types of resources that can be elevated as ARNIs are resources of concern under Section 404(c) of the Clean Water Act, which are identified as special aquatic sites in 40 C.F.R.§§230.40-45. Protection of special aquatic sites is a high national priority for the EPA:

> From a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources. 40 C.F.R. §230.3(q-l).

Special aquatic sites may be large or small geographically, so long as they possess "special ecological characteristics of productivity, habitat, wildlife protection or other important and easily disrupted ecological values" These areas "are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region." 40 C.F.R. §230.41(b).

The NTWC appreciates EPA's prompt attention to this matter and looks forward to a recommendation from EPA under Section 404(c) of the Clean Water Act for the Nushagak and Kvichak River drainages.

Sincerely,

Ken Norton

Ken Norton, Chair
NTWC

C: Clay Bravo, Chair, National Tribal Caucus
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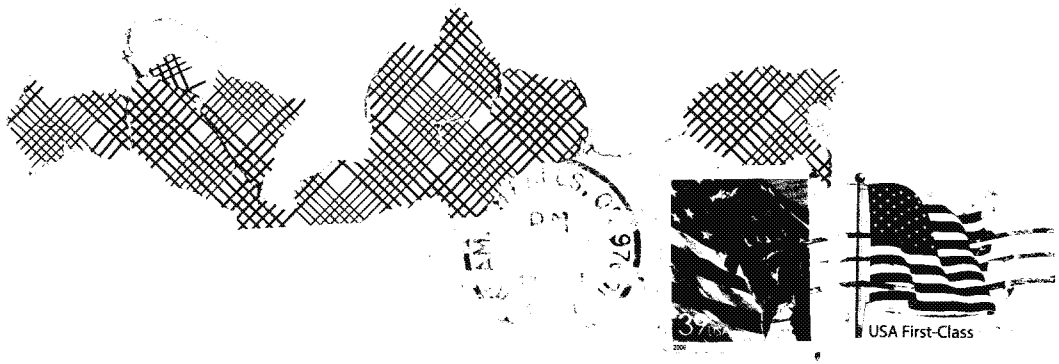

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